

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

10 UNITED STATES OF AMERICA, *ex rel.*  
11 JAHR, *et al.*,

12 Plaintiff,

13

14 | TETRA TECH EC, INC., *et al.*

15 | Defendants.

16 UNITED STATES OF AMERICA, *ex rel.*  
MCLAUGHLIN,

Plaintiffs,

18

19 SHAW ENVIRONMENTAL &  
20 INFRASTRUCTURE, INC., et al.

21 | Defendants.

22 | LINDA PARKER PENNINGTON et al

23 | Plaintiffs

24

25 | TETRA TECH EC, INC. *et al.*

26 | Defendants

**STIPULATION AND ~~PROPOSED~~ ORDER  
REGARDING DISCOVERY PROTOCOL  
AND CASE MANAGEMENT ORDER  
NUMBER ONE**

**Assigned to Hon. Judge James Donato**

Case No. 3:13-cv-03835-JD; 3:16-cv-1106-JD;  
3:16-cv-1107-JD

Case No. 3:14-cv-01509-JD

Case No. 3:18-cv-05330-JD

**STIPULATION AND [PROPOSED] ORDER REGARDING DISCOVERY PROTOCOL AND CASE  
MANAGEMENT ORDER NUMBER ONE**

1	BAYVIEW HUNTERS POINT RESIDENTS, <i>et al.</i> ,	Case No. 3:19-cv-01417-JD
2	Plaintiffs,	
3	v.	
4	TETRA TECH EC, INC., <i>et al.</i> ,	
5	<u>Defendants.</u>	
6	KEVIN ABBEY, <i>et al.</i> ,	Case No. 3:19-cv-7510-JD
7	Plaintiffs,	
8	v.	
9	TETRA TECH EC, INC., <i>et al.</i> ,	
10	<u>Defendants.</u>	
11	KEVIN ABBEY, <i>et al.</i> ,	Case No. 3:20-cv-06443-JD
12	Plaintiffs,	
13	v.	
14	UNITED STATES OF AMERICA, <i>et al.</i> ,	
15	<u>Defendants.</u>	
16	CPHP DEVELOPMENT, LP, <i>et al.</i> ,	Case No. 3:20-cv-1485-JD
17	Plaintiffs,	
18	v.	
19	TETRA TECH EC, INC., <i>et al.</i> ,	
20	<u>Defendants.</u>	
21	FIVE POINT HOLDINGS, LLP, <i>et al.</i> ,	Case No. 3:20-cv-1480-JD
22	Plaintiffs,	
23	v.	
24	UNITED STATES OF AMERICA, <i>et al.</i> ,	
25	<u>Defendants.</u>	
26	FIVE POINT HOLDINGS, LLP, <i>et al.</i> ,	Case No. 3:20-cv-1481-JD
27	Plaintiffs,	
28	v.	

TETRA TECH EC, INC., *et al.*,

## Defendants.

TETRA TECH EC, INC.,

Plaintiff,

V.

CH2M HILL, INC., *et al.*,

## Defendants.

Case No. 3:19-cv-04704-JD

Counsel for the parties in the following cases (the “Parties”), by and through their respective counsel of record, submit this Stipulation Regarding Discovery Protocol And Case Management Order Number One and request that the Court enter the attached [Proposed] Order in the FCA Cases, the Parcel A Cases, the Building 606 Cases, the Residents’ Case, and the Commercial Cases, which terms are defined as follows:

“FCA Cases” are: *US ex rel. Jahr et al. v. Tetra Tech EC, Inc. et al.*, Case No. 3:13-cv-3835-JD; *US ex rel Smith v. Tetra Tech EC, Inc. et al.*, Case No. 3:16-cv-1106-JD; *US ex rel. Wadsworth et al. v. Tetra Tech EC, Inc. et al.*, Case No. 3:16-cv-1107-JD; and *US ex rel. McLaughlin v. Shaw Environmental & Infrastructure, Inc. et al.*, Case No. 14-cv-1509-JD.

1 *Tech et al.*, Case No. 3:19-cv-03955-JD; *Yang v. Tetra Tech et al.*, Case No. 3:19-cv-03992-JD;  
2 *Datta v. Tetra Tech et al.*, Case No. 3:19-cv-05405-JD; *Duncan v. Tetra Tech et al.*, Case No.  
3 3:19-cv-05408-JD; and *San Francisco Shipyard Residents v. Tetra Tech et al.*, Case No. 3:19-cv-  
4 06137-JD.

5 “**Building 606 Cases**” are: *Kevin Abbey v. Tetra Tech, et al.*, Case No. 3:19-cv-07510-JD;  
6 and *Kevin Abbey v. United States*, Case No. 3:20-cv-06443-JD.

7 “**Residents’ Case**” is: *Bayview Hunters Point Residents v. Tetra Tech et al.*, Case No.  
8 3:19-cv-01417-JD.

9 “**Commercial Cases**” are: *Five Point Holdings v. USA*, Case No. 3:20-cv-01480-JD (“*Five*  
10 *Point v. U.S.*”); *Five Point Holdings v. Tetra Tech et al.*, Case No. 3:20-cv-01481-JD; *CPHP*  
11 *Development v. Tetra Tech et al.*, Case No. 3:20-cv-01485-JD (“*CDHP*”); and *Tetra Tech EC,*  
12 *Inc., v. CH2M Hill, Inc., et al.*, Case No. 3:20-cv-04704-JD (“*CH2M*”).

13 All Parties named in the above referenced cases (collectively, the “Actions”) are referred to  
14 collectively as the “Parties” or in the singular as a “Party.”

15 Counsel for the Parties have met and conferred as required by Federal Rule of Civil Procedure  
16 26(f). Pursuant to Rule 26(f), Civil Local Rule 16-9, and the Standing Order for All Judges of the  
17 Northern District of California the Parties in the Actions submit the following Stipulated  
18 Discovery Plan for the above-captioned cases:

19 **A. Stipulated Discovery Orders:**

20 The Court has approved stipulated orders regarding the following:

21 • Stipulated Protective Order (*CPHP* ECF No. 40)  
22 • Stipulated Order Regarding Federal Rule of Evidence 502(d) (*CPHP* ECF No. 111)  
23 • Stipulated Order Regarding ESI (*CPHP* ECF No. 105)

24 **B. Deposition Protocol:**

25 The following provisions supplement and amend the Court’s April 26, 2022, order (*Five*  
26 *Point v. U.S.* ECF No. 114), the deposition limits in Fed. R. Civ. P. 30 are revised as follows and  
27

1 applicable to the Actions:<sup>1,2</sup>

- 2 • Side 1<sup>3</sup> may collectively take 70 depositions of 7 hours each.
- 3 • Side 1 may collectively take an additional 6 depositions of 14 hours each.
- 4 • Side 2<sup>4</sup> may collectively take 70 depositions of 7 hours each.
- 5 • Side 2 may collectively take an additional 6 depositions of 14 hours each.
- 6 • Side 1 may notice the deposition of the same witness noticed by Side 2, and vice  
versa. Side 1's time with that witness will not count against Side 2's time with that  
witness, and vice versa. If both Sides notice a deposition of the same witness, the

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10 <sup>1</sup> Under this Order "Five Point" includes Five Point Holdings LLC, CP Development Co., LLC,  
11 and Emile Haddad; "CPHP" includes CPHP Development, LP, HPS Development Co., LP, HPS1  
12 Block 50, LLC, HPS1 Block 51, LLC, HPS1 Block 53, LLC, HPS1 Block 54, LLC, HPS1 Block  
13 55, LLC, HPS1 Block 56/57, LLC, Lennar Corporation, and Lennar Inc.; "Tetra Tech" includes  
14 Tetra Tech, Inc., Tetra Tech, EC Inc., Andrew Bolt, Dan L. Batrack, Steven M. Burdick, and  
15 William Dougherty; "Shaw" includes Shaw Environmental and Infrastructure, Inc., Chicago  
16 Bridge & Iron Co. N.V., Aptim Corp., Aptim Environmental & Infrastructure, Inc., and Aptim  
17 Federal Services, LLC; "CH2M Parties" includes CH2M Hill, Inc., Battelle Memorial Institute,  
18 Cabrera Services, Inc., Perma-Fix Environmental Services, Inc., and SC&A, Inc.; "RSRS"  
19 includes Radiological Survey & Remediation Services, Inc./LLC, Brian Henderson, and Daryl  
20 DeLong; "Relators" includes Arthur R. Jahr III, Susan V. Andrews, Elbert G. Bowers, Archie R.  
21 Jackson, Anthony Smith, Donald K. Wadsworth, and Robert McClean.

22 <sup>2</sup> The scope and terms of this Discovery Plan do not include the *USA ex rel. McLaughlin v. Shaw*  
23 *Environmental & Infrastructure, Inc. et al.* 14-cv-01509-JD case which was dismissed by Order of  
24 June 28, 2022, unless the pending Motion under FRCP 59 to Amend or Alter the Judgment is  
25 granted to permit FCA allegations to proceed against the Shaw Defendants. The scope and terms  
26 of this Discovery Plan does not include the *Anthony Smith* allegations regarding Treasure Island,  
27 and the *Wadsworth/McLean* allegations regarding Treasure Island and the Alameda Naval Air  
Station contained in the Relators' FCA combined complaints. This Discovery Plan also  
contemplates that the putative class actions proceed as class actions. To the extent one or more of  
the putative class actions does not proceed as a class action, the Parties agree to meet and confer  
regarding appropriate modifications to the procedures outlined herein.

28 <sup>3</sup> For purposes of this Order "Side 1" is defined as CPHP, Five Point, plaintiffs in the Parcel A  
Cases, plaintiffs in the Residents' Case, plaintiffs in the Building 606 Cases, the Relators, and the  
CH2M Parties. *See* Docs. 112 and 114.

<sup>4</sup> For purposes of this Order "Side 2" is defined to include the United States, Tetra Tech, Shaw,  
RSRS, and IO Environmental & Infrastructure, Inc. *Id.*

1 deposition shall run on consecutive business days until completed unless the  
 2 witness desires otherwise, subject to the time limits herein.

3 • The CH2M Defendants shall be entitled to 2 additional depositions (one 30(b)(6)  
 4 deposition of the Navy, and one 30(b)(6) deposition of TtEC).

5 • The deposition notice shall indicate whether the noticed deposition is one of the six  
 6 allocated fourteen-hour depositions.

7 The Court will consider additional depositions and deposition time if supported by a  
 8 showing of good cause. The Parties understand the Court's April 26, 2022 Order not to apply to  
 9 expert depositions and agree the deposition limits and procedures contemplated in this [Proposed]  
 10 Order do not apply to depositions of any experts designated pursuant to FRCP 26.

11 Each Side may depose any and all witnesses produced to testify on each agreed upon  
 12 Federal Rule of Civil Procedure 30(b)(6) topic, but (unless otherwise specified herein) each 7-  
 13 hour<sup>5</sup> period of 30(b)(6) deposition testimony shall count as one deposition for the purpose of the  
 14 Side's limit (e.g., the depositions of seven 30(b)(6) witnesses for two hours each (14 hours in  
 15 total) will count as two depositions). All parties on a given Side shall coordinate to issue a single  
 16 30(b)(6) notice to a party on the other Side, and deposition notices may cover no more than 25  
 17 topics, each of which are to be described with reasonable particularity. Paragraph 16 of the Court's  
 18 Standing Order for Discovery in Civil Cases shall otherwise apply to all depositions under FRCP  
 19 30(b)(6). Any party may move to have the Court allow additional topics upon a showing of good  
 20 cause.

21 The Party taking a deposition must give written notice to every other Party at least 30 days  
 22 prior to the date of the deposition. Notice shall be served on each Party by e-mail and by posting  
 23 the document on the parties' Magna database. The notice shall state whether the deposing Party  
 24 intends to conduct the deposition in person or remotely by video teleconference. If the deposition

25 \_\_\_\_\_  
 26 <sup>5</sup> All time periods for *depositions* refer to time on the record in which the witness is being  
 27 questioned.

1 is to be conducted in person, the deposing Party shall ensure that any Party that elects to  
 2 participate remotely by video teleconference may do so. Any Party objecting to a deposition being  
 3 conducted remotely shall notify the noticing Party by email within 7 days of receiving the  
 4 deposition notice. The Parties shall meet and confer in an attempt to resolve those objections. If  
 5 the Parties are unable to resolve those objections, the responsibility shall be on the noticing Party  
 6 to obtain the Court's permission to conduct the deposition by remote means consistent with  
 7 Federal Rules of Civil Procedure Rule 30(b)(4) ("*By Remote Means*. The Parties may stipulate—or  
 8 the court may on motion order—that a deposition be taken by telephone or other remote means.  
 9 For the purpose of this rule and Rules 28(a), 37(a)(2), and 37(b)(1), the deposition takes place  
 10 where the deponent answers the questions."). Unless otherwise ordered by the Court, the  
 11 deponent must be in the same room as the Court Reporter and videographer if the deposition is  
 12 conducted remotely. In the event a deposition is to be conducted remotely, any Party may attend  
 13 the deposition in person at their sole discretion. The Parties expressly disclaim any intent to  
 14 stipulate to remote depositions in the Actions.

15 Parties will use their best efforts to make witnesses available for deposition at a mutually  
 16 agreeable time and location and without undue delay. If a witness is a former employee of any  
 17 Party and is not represented by counsel, upon receipt of a deposition notice for the former  
 18 employee, that Party shall, within 14 days of the deposition notice, provide the date of departure  
 19 and last known address of the former employee, whether the Party's counsel will accept service of  
 20 the notice, whether the Party's counsel will be representing that Party in connection with the  
 21 deposition and, if not, the name and contact information for the witness' counsel or that the  
 22 witness is unrepresented. To the extent this information has previously been provided in response  
 23 to discovery requests or required disclosures, the Party need only confirm within 14 days that the  
 24 previously provided information remains operative.

25 If a Party serves a subpoena for the production of documents or electronically stored  
 26 information and a subpoena commanding attendance at a deposition, the Party serving the  
 27

1 subpoena must schedule the deposition for a date at least 14 days after the return date for the  
 2 document subpoena, and if the Party serving the subpoena agrees to extend the date of production  
 3 for the document subpoena in a way that would result in fewer than 14 days between the extended  
 4 production date and the date scheduled for the deposition, the date scheduled for the deposition  
 5 must be postponed to be at least 14 days following the extended production date, unless all Parties  
 6 consent to fewer than 14 days.

7       The deposition notice shall indicate whether the noticed deposition is one of the six  
 8 allocated fourteen-hour depositions

9       During depositions noticed by only one side, the non-noticing side may cross-examine the  
 10 witness for up to one hour at the conclusion of direct examination, and the side who conducted the  
 11 direct examination shall be entitled to redirect examination of the witness for no more than the  
 12 same amount of record time as the cross-examination, regardless of whether the cross-examination  
 13 and/or redirect examination extends past the 7 hour limit. For any deposition lasting longer than 7  
 14 hours, the deponent may demand that the time remaining after the seventh hour be completed on  
 15 the noticed date, or be carried over to be completed on the next consecutive business day.

16       Each Side shall coordinate in the noticing and scheduling of all depositions. Any  
 17 deposition noticed by a Side shall automatically be deemed to have been noticed by all Parties on  
 18 that Side, in the Actions and shall count against the total number of depositions allotted to their  
 19 respective Sides. Any person deposed in the Actions shall automatically be deemed to have been  
 20 deposed in all cases and shall not be deposed again in any of the Actions absent stipulation or  
 21 leave of Court. Objections are preserved for all Parties when one Party makes the objection. Side 1  
 22 and Side 2 in the Actions may divide the time allotted to their side in any manner they choose,  
 23 provided that they do not collectively exceed the time allotted to their side and make reasonable  
 24 efforts to coordinate their examination in order to avoid duplicative questioning.

25       The Parties agree that all depositions shall be videotaped. Costs for videotaping the  
 26 deposition, as well as the cost of the court reporter and any costs associated with remote

1 videoconference hosting, shall be borne by the noticing Party, except parties are expected to pay  
2 for copies of transcripts and videos that they order for themselves and to pay for and arrange for  
3 their own videoconference access. In the event a deposition is noticed by more than one Party,  
4 costs for videotaping, court reporting, and remote videoconference hosting will be evenly split  
5 between the Parties noticing the deposition.

6 The Parties shall follow Civil Local Rule 30-2 of the United States District Court for the  
7 Northern District of California with regard to consecutive numbering of deposition exhibits, which  
8 requires as follows:

9                   **“(a) Sequential Numbering of Pages.** The pages of the deposition of a single  
10                   witness, even if taken at different times, must be numbered sequentially

25 (4) In addition to exhibit numbers, documents may bear other numbers or  
26 letters used by the [P]arties for internal control purposes.”

1       In addition, if possible, each new exhibit shall be given the next available number. If it is  
 2 not possible to do so (as, for example, when multiple depositions are conducted on the same day),  
 3 then the Parties shall break the sequence and use higher numbers to avoid duplication. If, through  
 4 inadvertence, the same exhibit has been marked with different exhibit numbers, the Parties shall  
 5 assign the lowest such exhibit number to the exhibit and conform all deposition transcripts and  
 6 exhibits to reflect the lowest number. The superseded number shall not be reused by the Parties.  
 7 For example, if the same exhibit has been marked as 52 in the deposition of A and 125 in the  
 8 depositions of B, C and/or D, the exhibit marked 125 shall be renumbered 52 and the depositions  
 9 of B, C and D shall be conformed to the renumbered exhibit. Thereafter, number 125 shall not be  
 10 used.

11       The Parties stipulate to the handling of the deposition transcripts in all depositions in the  
 12 Actions as follows:

- 13       • The court reporter(s) is relieved of their duties under the Federal Rules of Civil  
 14           Procedure and the local rules of the Northern District of California.
- 15       • Upon completion of the transcript, the court reporter shall deliver the original transcript  
 16           directly to the attorney representing the deponent at deposition (“Representing  
 17           Attorney”).
- 18       • The Representing Attorney will take responsibility for forwarding the original  
 19           transcript to the deponent.
- 20       • Unless otherwise agreed by all Parties attending the deposition and the deponent, the  
 21           deponent shall have 30 days from receipt of the original transcript by the Representing  
 22           Attorney to review the transcript, sign it, make any changes they deem necessary and  
 23           provide the original signed deposition with corrections to the Representing Attorney.  
 24           “If there are changes in form or substance [to the original transcript], [the deponent  
 25           shall] sign a statement listing the changes and the reasons for making them.” Federal  
 26           Rule of Civil Procedure Rule 30 (e)(1)(B).

- 1       • The Representing Attorney will take responsibility for serving a copy of any changes to  
2       the deposition and the deposition signature page on all Parties to the Action.
- 3       • The Representing Attorney's firm shall maintain custody of the original transcript.
- 4       • In the event the original transcript is not available, a certified copy of any transcript  
5       may be used in lieu of the original at trial or any related proceeding.
- 6       • Counsel and/or the deposition officer must state this stipulation on the record at the  
7       close of the depositions consistent with Federal Rule of Civil Procedure Rule 30 ("At  
8       the end of the deposition, the officer....must set out any stipulations made by the  
9       attorneys about custody of the transcript or recording and of the exhibits, or about any  
10       other pertinent matters.")
- 11       • This stipulation shall not be modified except by written stipulation of the Parties  
12       approved by the Court, or by order of the Court, for good cause shown.

13       The Parties have agreed to utilize Magna Legal Services ("Magna") as the court reporter  
14       and videographer for all depositions in the Actions. A copy of each final deposition transcript and  
15       exhibits, including the final signature page of the deponent and any deposition changes made by  
16       the deponent, shall be maintained on the Magna database consistent with the agreement between  
17       the Parties and Magna. It shall be the responsibility of Magna to load the final transcript onto the  
18       Magna database upon completion of the final certified transcript by the court reporter. It shall be  
19       the responsibility of the Representing Party to load the deponent's signature page and any  
20       deposition changes made by the deponent onto the Magna database upon receipt of same from the  
21       deponent.

22       The Parties will meet and confer to discuss further issues regarding allocation of time  
23       among Parties, deposition notice procedures, and other logistical issues.

24       **C. Written Discovery:**

25       **Interrogatories and Requests for Admission:** With respect to written interrogatories,  
26       the Parties agree to proceed under the limits provided in the Rules of Civil Procedure and Local  
27

1 Rules. If a Party believes that additional written discovery is warranted it may move the Court to  
2 allow such additional discovery, which the Court may grant upon a good cause showing.

3        Regarding requests for admissions, Five Point, CPHP, Tetra Tech, and the United States  
4 shall each be permitted to serve 125 total requests for admission pursuant to Fed. R. Civ. P. 36 in  
5 the Commercial Cases (excluding the CH2M Case). Plaintiffs and Defendants in the FCA cases  
6 each may serve 125 total requests for admissions in the FCA Cases. Plaintiffs and Defendants in  
7 the CH2M Case, Parcel A Cases, the Residents Cases, and the Building 606 Cases agree to  
8 proceed under the limits provided in the Rules of Civil Procedure and Local Rules. Requests for  
9 admission regarding the authenticity, genuineness or identity of documents under F.R.E. 901 or  
10 FRCP 36 are excluded from this limit. The Court will consider requests by a Party to serve  
11 additional requests for admissions upon a showing of good cause.

#### D. Service:

13 All deposition notices, discovery requests, and discovery responses shall be served via  
14 email to counsel for all Parties in the Actions and to the Parties' Magna database. The  
15 undersigned Parties agree to electronic service of all such documents.

## E. Discovery Coordination with Related Cases:

17 In order to promote judicial efficiency and avoid unnecessary duplicative costs, all  
18 document productions served by any of the Parties in any of the Actions shall be treated as if it  
19 had been requested by every Party and no further process or procedure is necessary for those  
20 document productions to be utilized in all Actions as if it had been requested by all Parties.  
21 Similarly, without counting against the limits provided by the Rules of Civil Procedure and Local  
22 Rules with respect to each distinct Action, all Requests for Admission and responses and  
23 objections thereto, and all Interrogatories and responses and objections thereto, served by any of  
24 the Parties in any of the Actions shall be treated as if they had been requested by every Party and  
25 no further process or procedure is necessary for those responses to be utilized in all Actions as if it  
26 had been requested by all Parties.

1        This provision does not alter any Party's right to assert any objection to the use of any  
 2 discovery under the Federal Rules of Evidence.

3        **F. Scheduling:**

4        The Parties respectfully suggest that given the complexity of discovery in the Actions and  
 5 the outstanding motions in related cases, it is premature to order a full pretrial schedule. However,  
 6 the Parties agree to meet and confer on a full pre-trial schedule. At this time, the Parties agree to  
 7 the following deadlines:

8        **1. Completion of Production of Documents Responsive to First Party Document**

9        **Production Requests: June 2, 2023.<sup>6</sup>**

10       In the Court's December 2, 2022 Minute Order, the Parties were directed to "meet and  
 11 confer on a plan to prioritize custodians and narrow search terms, and agree upon procedures that  
 12 will complete all document production by March 2023 at the latest." The Parties continue to  
 13 engage in the meet and confer process to prioritize custodians and narrow search terms, and  
 14 therefore the Court hereby extends the time to complete document productions to June 2, 2023.

15       All document productions must be completed on or before June 2, 2023. The production of  
 16 privilege logs that comply with Rule 26(b)(5) and the corresponding Advisory Notes shall be  
 17 completed by July 28, 2023.<sup>7</sup> Following the filing of this Case Management Order, if any Party  
 18 believes that it has discovered information, in deposition or otherwise, that demonstrates that  
 19 existence of Party documents not yet requested or produced, the Parties will meet and confer on  
 20 the scope of, and good cause for, limited additional document requests. Any such requests must be  
 21 narrowly tailored to seek a specific document or set of documents.

22  
 23  
 24       <sup>6</sup> These deadlines do not include Requests for Production served on individual plaintiffs in the  
*BVHP, Abbey, and Pennington* cases given the posture of those cases and the status of the Plaintiff  
 25 Fact Sheet process in each of those actions. Nor do the deadlines apply to third-party discovery.

26       <sup>7</sup> Because a Party may determine that material was improperly withheld on privilege grounds  
 27 during the course of preparing its privilege logs, some documents may be released before July 28,  
 2023.

1 Plaintiff Five Point shall use Technology Assisted Review and reasonable search terms,  
 2 which continue to be negotiated by the parties, to identify and produce responsive records. Five  
 3 Point shall search the records of 39 custodians, subject to additional negotiation between by the  
 4 parties.

5 All other plaintiffs and relators shall propose search terms and custodians to defendants to  
 6 reach agreement on the scope of their respective productions. The parties are directed to work  
 7 cooperatively to identify search terms that target the discovery of relevant records, and, where  
 8 possible, reduce the burden on the plaintiffs and relators to produce any extraneous materials.

9 The Tetra Tech Parties will run the search terms to be negotiated by the parties and share  
 10 “hit reports” based on those search terms. The Tetra Tech Parties have provided preliminary hit  
 11 reports that would result in the review of 1,220,307 documents. The Parties will engage in further  
 12 discussions to reduce the total scope of documents requiring review. Tetra Tech will use the list  
 13 of custodians previously agreed to by the parties (with the addition of Dan Batrak, subject to  
 14 appropriate limitations on the scope of search terms applicable to his custodial files, *see Jahr* Dkt.  
 15 300). The parties are directed to identify search terms that target the discovery of relevant records,  
 16 narrow the scope of document productions, and reduce the burden on Tetra Tech to review  
 17 extraneous materials.

18 The United States expects to complete production of the Environmental Restoration  
 19 Program files, the Navy’s environmental analytical and GIS data files, the Nuclear Regulatory  
 20 Commission files, and the Army Joint Munitions Command files by March 31, 2023, without the  
 21 need to alter its scope and method of review. To facilitate production of the remaining files, the  
 22 United States will work with the Parties to reduce the number of EPA and Navy custodian and will  
 23 apply negotiated search term strings to identify responsive records. The United States will  
 24 circulate its search string “hit reports” to the other Parties by January 13, 2023. The United States  
 25 seeks to amend the current Clawback/502(d) Order and Protective Order. The United States will  
 26 conduct targeted reviews for confidentiality and privilege, however, it contends that it may not be

1 able to manually review every document prior to the Court's production deadline given the  
 2 volume of potentially responsive material. Certain plaintiffs have expressed concerns about such  
 3 amendments. On January 5, 2023, the United States circulated draft stipulations to amend the  
 4 current Clawback/502(d) Order and Protective Order to allow for production without penalty,  
 5 regardless of the level of pre-production review. The Parties are continuing to meet and confer,  
 6 and by January 13, 2023, the Parties will submit proposed stipulated amended Clawback and  
 7 Protective Orders or simultaneous letter briefs outlining their respective positions.

8 The parties are directed to work cooperatively to identify search terms that target the  
 9 discovery of relevant records, and, where possible, reduce the burden on the government to  
 10 produce material that are not proportionate to the needs of the case.

11 On December 21, 2022, Tetra Tech and CH2M exchanged proposals for completing  
 12 production of the documents they have requested from each other in the *CH2M* case, and the  
 13 parties continue to meet and confer in good faith. To identify documents responsive to the RFPs  
 14 served by Tetra Tech and complete its production of responsive, non-privileged, and non-restricted  
 15 documents by the court-ordered deadline, CH2M has agreed to search in the centralized document  
 16 management sites maintained in connection with the project at issue, as well as in the custodial  
 17 files of seven individual custodians, using eight comprehensive search strings. CH2M will  
 18 continue to work cooperatively with Tetra Tech as necessary to reduce the number of non-  
 19 responsive documents subject to review.

20 **2. Deadline to File and Serve Motion to Certify Classes in Putative Class Actions:<sup>8</sup>**

21 June 16, 2023.<sup>9</sup>

22  
 23  
 24 <sup>8</sup> This deadline does not apply to *Abbey v. United States* because the United States' motion to  
 25 dismiss the second amended complaint for lack of subject matter jurisdiction is pending. If  
 jurisdiction is established in this case, the United States will meet and confer about briefing  
 relevant to putative class issues.

26 <sup>9</sup> The Parties to the putative class action cases will meet and confer regarding coordination of  
 27 briefing and hearing dates between the three cases.

3. **Close of Fact Discovery:** December 13, 2024.
4. **Simultaneous Expert Disclosures:** May 9, 2025.
5. **Simultaneous Rebuttal Expert Disclosures:** August 8, 2025.
6. **Close of Expert Discovery:** December 19, 2025.

## **G. Further Amendment**

Except as otherwise provided in this Stipulation, its terms may be amended only by written stipulation of the Parties approved by the Court, or by order of the Court for good cause shown.

**IT IS SO STIPULATED, through Counsel of Record.**

10 | DATED: January 20, 2023

## COTCHETT, PITRE & McCARTHY, LLP

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15 | DATED: January 20, 2023

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22 | DATED: January 20, 2023

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1 DATED: January 20, 2023

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16 DATED: January 20, 2023

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11 DATED: January 20, 2023

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1 DATED: January 20, 2023

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DATED: January 20, 2023

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-20-

STIPULATION AND [PROPOSED] ORDER REGARDING DISCOVERY PROTOCOL AND CASE  
MANAGEMENT ORDER NUMBER ONE

1  
2  
3 DATED: January 20, 2023

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Attorneys for Defendant Battelle Memorial Institute

**ORDER**

Pursuant to stipulation, the parties' proposed Order re Discovery Protocol and Case Management Order Number One is approved.

Dated: February 2, 2023

